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National Address on Behalf of The Government of The Bahamas on the Developments of FTX in The Bahamas

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## Press Release

### National Address on Behalf of The Government of The Bahamas on the Developments of FTX in The Bahamas

**Authored by:** Bahamas Information Services**Source:** Bahamas Information Services**Date:** November 27, 2022

Senator Ryan Leo Pinder Attorney General Commonwealth of The Bahamas

November 27, 2022

Good Evening, Ladies and Gentlemen.

Thank you for joining me this evening as I offer a National Statement on behalf of The Government of The Commonwealth of The Bahamas, on the current situation regarding FTX Digital Markets Limited.

As Attorney-General and Minister of Legal Affairs, I wish to start by asserting one of the most fundamental principles of our jurisdiction.

The Bahamas is a place of laws.

The rule of law, and the exercise of due process, characterise the integrity of our jurisdiction.

As the third-oldest democracy in the western hemisphere, our legal, regulatory and financial sectors have stood the test of time.

Tonight, while I speak on behalf of The Government, it is in fact The Securities Commission of The Bahamas which is the lead actor in respect of the present situation, as they are the statutory regulator of companies like FTX Digital Markets, who operate in the digital asset space.

To date, The Securities Commission has issued two significant statements concerning the provisional liquidation proceedings involving FTX, and other related matters.

I encourage you all to read those statements for yourselves, as they are definitive accounts of the known facts, and the application, of the relevant laws and regulatory regime in relation to FTX.

These statements should be also read in conjunction with the Communication made to The House of Assembly by Prime Minister Davis on November 22 nd , also concerning FTX Digital Markets.

While cryptocurrency and digital assets are part of a new and complex industry, on a basic level, recent events involving the insolvency crisis experienced by the FTX group of companies have been experienced around the world in practically every sector.

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To that extent, what happened can be more readily understood as a case of a very large business failure as a result of questionable internal management practices and corporate governance.

## Recent Events

Given how quickly things have moved, it is hard to believe that it was only 25 days ago, on November 2<sup>nd</sup>, that an article first appeared on the news site CoinDesk, with the details of a leaked financial statement of Alameda Research, a trading company also

founded by Sam Bankman-Fried.

I want to pause here to emphasize that among the over 100 companies located in dozens of jurisdictions around the world, FTX Digital Markets is the only entity regulated in The Bahamas. Alameda Research is NOT regulated in The Bahamas.

To the extent Alameda Research is found to have committed any improprieties in The Bahamas, then of course it will be subject to our jurisdiction.

The balance sheet of Alameda Research, CoinDesk reported at that time, revealed that a large portion of their assets were held in FTT, a token issued by an FTX entity, that granted token holders a discount on trading fees.

Four days later, on November 6<sup>th</sup>, Binance, a crypto exchange that is a major rival to FTX, announced that it was selling off all its substantial holdings in the FTT token.

This announcement prompted a large number of FTX investors to withdraw hundreds of millions of dollars in digital assets from FTX – causing a liquidity crunch. In short, FTX was experiencing the equivalent of a “run on the bank”, when customers all rush to withdraw assets simultaneously.

Two days later, on November 8<sup>th</sup>, it was reported that Binance had entered a non-binding agreement to buy FTX.

However, the very next day, November 9<sup>th</sup>, Binance pulled out of the deal.

One day later, November 10<sup>th</sup> 2022, the Securities Commission of The Bahamas, announced that it had taken action to freeze the assets of FTX Digital Markets, had suspended the registration of FTX Digital Markets as a licensee under The Digital Assets and Registered Exchanges Act, also known as the “DARE Act”, and applied to the Supreme Court of The Bahamas, pursuant to its regulatory authority under the DARE Act, to place the company into provisional liquidation.

The speed with which the Securities Commission was able to move was remarkable by any standard.

Over the course of eight days, market confidence was lost in a company which at one point had a \$32 billion valuation.

The Securities Commission deserves the highest praise for moving so swiftly and decisively to suspend FTX Digital Markets’ license and appoint provisional liquidators.

In addition, the Securities Commission recognized that given the nature of digital assets, and the risks associated with hacking and compromise, placing FTX Digital Markets into provisional liquidation was not sufficient to protect the customers and creditors of the company.

Therefore, pursuant to their authority under the DARE Act, and pursuant to an order of the Supreme Court of The Bahamas, the Securities Commission secured the assets of

FTX Digital Markets to be held on behalf of and for the benefit and restitution of clients and creditors of FTX.

The Commission was the first regulator in the world to take significant steps with respect to the FTX group of companies, which has operations, and regulated activities throughout the world. This was done for the purpose of protecting the interests of FTX's customers and creditors, as well as the integrity of the Bahamian financial services industry.

The Securities Commission was able to move so quickly because of the strength of the legislative framework which was already in place in The Bahamas to regulate digital asset companies like FTX Digital Markets.

No other jurisdiction in the world moved or could have moved this quickly in circumstances such as these

It is important for me to share this summary of what took place, because over the last few weeks, the basic facts have been obscured by guessing games and rumours.

We understand the enormous interest in this story.

But as a government, we decided right away that what was most important was not to engage with speculation or gossip, but instead to proceed methodically and deliberately, in accordance with the exercise of due process and the rule of law.

As we have stated, we are in the early stages of an active and ongoing investigation. It is a very complex investigation: The structure and reach of FTX's activities are truly global, as they consist of over 100 companies located in dozens of jurisdictions.

As with any active inquiry, we seek to share updates in a way that does not compromise or constrain investigators.

And tonight, I can underscore that we believe that faith in The Bahamas as a responsible jurisdiction will only be strengthened as events continue to unfold.

### **Legislative Framework:**

The DARE Act

The digital assets industry is still in its infancy.

The emergence of any new industry will inevitably feature ups and downs, as innovators attempt to harness new technology to new applications.

Since the official launch of Bitcoin in January 2009<sup>1</sup>, the possibilities that digital assets, smart contracts, distributed ledger technology (or DLT) and fintech represented piqued interest across the financial and technology worlds.

Despite the rapid growth in the industry, by 2018 many jurisdictions had not introduced any legal or regulatory framework that specifically addressed digital assets. There are still no agreed-upon standards globally. Regulators around the world are still grappling with the issue of how to regulate digital assets.

There are a number of reasons for this, including the complexity of regulating the digital assets space, but most regulators actually lack the broad statutory mandate or legal scope to provide any regulation, or even legal clarity, on cryptocurrencies, digital assets and related businesses.

Digital assets are in use in jurisdictions across the world - in North America, in Central and South America, in Europe, in the Middle East, in Asia, in Africa, in the South Pacific. They are being utilized and traded in countries -- whether there is a regulatory framework in place or not.

The Bahamas decided that we needed to actively engage in this sector for two reasons: first, to take advantage of the strategic opportunity of this new sector; and second, to protect our existing financial services sector from the risks which unregulated activities connected with crypto-currency and other digital assets may bring about such as illicit financing.

The Bahamas, with significant expertise in international financial services regulation, decided we would not allow this activity in our jurisdiction without the establishment of a robust legal and

regulatory framework, reflective of the best practices observed in the industry and in compliance with the recommendations of global standards setters.

In 2020, The Bahamas enacted 'The Digital Assets and Registered Exchanges Act'. It remains a pioneering piece of legislation, recognized internationally as innovative and forward-thinking.

One example: earlier this year, Assistant United States Secretary of State for Western Hemisphere Affairs, Brian Nichols, noted that: "The Bahamas has long been an important financial center globally and it is pioneering responsible cryptocurrency regulation." 2

It is the provisions of 'The Dare Act' which gave the authority to the Securities Commission to act as quickly and decisively as it did in the case of FTX Digital Markets. Arrival of FTX in The Bahamas

So how did we get to this moment with FTX Digital Markets?

In July 2021, FTX Digital Markets was incorporated in The Bahamas, and registered as a digital asset business under The DARE Act.

<https://thenassauguardian.com/us-confident-in-bahamas-commitment-to-cryptocurrency-regulations/>

In September 2021, just over one year ago, the Securities Commission, after many months of prior engagement, approved FTX Digital Markets' licence to operate. FTX operated globally for over two years prior to coming to The Bahamas, having been headquartered previously in Hong Kong.

FTX Digital Markets quickly set about establishing a major presence in The Bahamas, buying properties, hiring and training Bahamian staff, and sponsoring a number of charitable and community ventures.

In many ways this behaviour was no different from that which we see from many of our corporate citizens.

Meanwhile, in the wider economy, inflation battered countries across the globe, leading to higher interest rates; the invasion of Ukraine added to the volatility of energy prices; and a broad range of tech companies slumped in the stock market and laid off tens of thousands of workers.

The international digital assets industry experienced a major downturn as well.

As Prime Minister Davis pointed out in his statement to Parliament: "There have been both booms and busts in the world of crypto, and this year has been a significant bust – with total market capitalization falling from \$3 trillion to \$800 billion or lower.

The steep sell-offs and declining volumes have led analysts to describe this time as a "crypto winter".

In the spring of this year, Terra/Luna, a stablecoin system collapsed, leading eventually to a wave of bankruptcies by crypto lending platforms, like Celsius, Three Arrows Capital and Voyager.

For a time, it appeared that FTX would bail out and acquire the assets of some of these distressed companies. But instead, FTX itself could not avoid the cascading failures and faced its own severe insolvency crisis.

Where Are We Now? So where are we now?

As I said at the outset, there is an active and ongoing investigation of the affairs of FTX Digital Markets, involving both civil and criminal authorities.

As is provided for under our regulatory framework, we are already working with a number of specialists and experts, and will continue to do so as the need arises.

There are a number of protective measures which the regulator has taken under the authority conferred by the Supreme Court of The Bahamas.

For the time being, we will not set out those measures in any further detail, until we are confident that doing so will not jeopardise any aspect of the ongoing investigations.

We urge all authorities, here and abroad, at a minimum, to exercise at least the same amount of prudence and restraint in their public commentary as we do, so as not to prejudice the proceedings.

It is extremely regrettable that in Chapter 11 filings for bankruptcy protection made in New York last week, that the new Chief Executive of FTX Trading Ltd. – not the Bahamas-based FTX Digital Markets – but an affiliate company incorporated in Antigua and Barbuda -- misrepresented the timely action taken by the Securities Commission, and used inaccurate allegations lodged in the Transfer Motion to do so.

It is possible that the prospect of multi-million dollar legal and consultant fees is driving both their legal strategy and the intemperate statements. In any case, we urge prudence and accuracy in all future filings.

As for what comes next:

The Securities Commission, Financial Intelligence Unit, and the Financial Crimes Unit of the Royal Bahamas Police Force will continue to investigate the facts and circumstances regarding FTX's insolvency crisis, and any potential violations of Bahamian law.

They will hold accountable any responsible companies and individuals, and act in cooperation with other regulatory agencies and law enforcement bodies, both here in The Bahamas, and in other countries affected.

These events remind us of the lessons learned from securities and other financial regulation about the need for strong cross-border cooperation. The public worldwide will be best served by strong international regulatory cooperation.

That means more

jurisdictions taking up the challenge, following our lead, and implementing strong regulatory frameworks. We will, as we always do, cooperate with international regulatory and enforcement agencies.

## Keeping Things In Perspective

Ladies and Gentlemen:

While new facts emerge every day, there is still much to discover.

And while they may well be a number of personal tragedies associated with the fall of this company, there appears to be little contagion beyond the digital assets' sphere, both here in The Bahamas and around the world.

In fact, Bahamians and other stakeholders in The Bahamas, should take great confidence from the Standard & Poor's Ratings forecast for The Bahamas, issued last

Tuesday, November 22 nd .

They projected a stable outlook for our economy, resting in part on the assumption that there will be no material adverse impact on The Bahamas from the worldwide collapse of FTX.

But as our investigations continue, I must emphasise that ill-informed speculation is not helpful: neither to the customers of FTX, nor their creditors, nor their investors or the general public.

Any attempt to lay the entirety of this debacle at the feet of The Bahamas, because FTX is headquartered here, would be a gross oversimplification of reality.

The dozens and dozens of companies involved, registered in numerous jurisdictions across the world, the scope of related parties, including some of the world's most sophisticated investors, demonstrate the cross-border, multi-jurisdictional nature of this event.

And it is deeply misguided to conclude that reluctance to communicate the details of an active investigation means that nothing is happening; in fact, the government's discretion stems from how seriously we take our commitment to the rule of law and the independence of the securities regulator.

We have been shocked at the ignorance of those who assert that FTX came to The Bahamas because they did not want to submit to regulatory scrutiny; in fact, the world is full of countries in which there is no legislative or regulatory authority over crypto, but The Bahamas is not one of them.

We have been able to assert our leadership in this new field because in the digital assets arena, what matters is not the size of your land mass, or the size of your GDP, but the ingenuity and rigour of your people and jurisdiction.

When a respected risk and market integrity firm ranked the world's digital assets regulatory regimes earlier this year, our country was first, and for good reason.

The digital asset sector is a high profile, embryonic sector of the Bahamian financial services sector, an area where The Bahamas has demonstrated global leadership for decades.

As a world-leading destination for tourism, we have been audacious before in asserting that 'it's better in The Bahamas'. We will not hesitate to do so again. **Conclusion**

My Fellow Bahamians:

We know that the world is watching.

Insofar as these are matters of pressing global interest and concern, we welcome the attention.

We have every confidence that the world will see how our policies, laws and regulatory regime have so much to commend to others.

We have much to be proud of. Global-Crypto-Regulation-Index

We do not apologise for our ambition for Bahamians to be at the forefront of this exciting innovative sector. The Bahamas stands behind its decision to regulate digital assets and related businesses. We stand behind the quality of the regulations that exist.

We continue to invite digital assets businesses to operate from this jurisdiction. All told, we remain one of few countries in the world with such a complete and effective regulatory framework.

The actions the Securities Commission of The Bahamas took on 10th and 12th November were to protect the clients and creditors of FTX Digital Markets. This

demonstrates why the DARE Act is among the world's leading legislative frameworks

for the regulation of digital assets and related businesses.

Like the dotcom boom and bust of the past, we believe that the turbulence currently being experienced by the digital asset sector will pass, and that there is still much potential for growth and opportunity ahead.

In fact, I am fully confident that, as matters progress, and the activities of the FTX group are either restructured or wound down, The Bahamas will emerge, held in even higher esteem.

A turbulent crypto-currency period on a global basis, and the downfall of a single Bahamian company, in no way threaten a bright future for The Bahamas.

Quite the opposite.

Those entrepreneurs who are ready to create new financial products that serve a broader range of consumers, remain welcome to come to The Bahamas. They can be certain that we have in place a principled, fair, comprehensive and ethical regulatory regime. They can also be certain we will act quickly and decisively to enforce it, if and when our laws and regulations are breached.

They will see that The Bahamas is a place of laws.

They will see that the rule of law, and the exercise of due process, characterise the integrity of our jurisdiction.

And they will have found yet another reason why, it's better in The Bahamas.

Thank you.